



March 22, 2005

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## ENGROSSED HOUSE BILL No. 1135

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DIGEST OF HB 1135 (Updated March 21, 2005 12:07 pm - DI 113)

**Citations Affected:** IC 4-22; IC 13-14.

**Synopsis:** Electronic publication of the IAC and Indiana Register. Requires the legislative services agency, as the publisher, to publish the Indiana Administrative Code (IAC) and the Indiana Register in electronic form only after June 30, 2006. Establishes administrative rulemaking requirements to facilitate the electronic editing and publication of the documents. Requires an agency to obtain an "authorization to proceed" from the publisher of the Indiana Register. Specifies that the publisher of the Indiana Register and Indiana Administrative Code may permanently publish those documents on the Internet to meet the publisher's publication duties. Requires the publisher to provide a paper copy of each document to each federal depository library in Indiana.

**Effective:** July 1, 2005.

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### Heim, Austin

(SENATE SPONSORS — FORD, HEINOLD, HERSHMAN)

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January 11, 2005, read first time and referred to Committee on Government and Regulatory Reform.

February 8, 2005, reported — Do Pass.

February 14, 2005, read second time, ordered engrossed. Engrossed.

February 15, 2005, read third time, passed. Yeas 93, nays 4.

#### SENATE ACTION

February 24, 2005, read first time and referred to Committee on Economic Development and Technology.

March 21, 2005, amended, reported favorably — Do Pass.

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EH 1135—LS 7082/DI 47+



March 22, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1135

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 4-22-2-20 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. (a) Whenever an  
3 agency submits a rule to the publisher, the attorney general, the  
4 governor, or the secretary of state under this chapter, the agency shall  
5 submit the rule in the form of a written document that:

6 (1) is clear, concise, and easy to interpret and to apply; and

7 (2) uses the format, numbering system, standards, and techniques  
8 established under section 42 of this chapter.

9 (b) **After June 30, 2006, all documents submitted to the**  
10 **publisher under this chapter must be submitted electronically in**  
11 **the format specified by the publisher.**

12 SECTION 2. IC 4-22-2-24 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. (a) An agency shall  
14 notify the public of its intention to adopt a rule by complying with the  
15 publication requirements in subsections (b) and (c).

16 (b) The agency shall cause a notice of a public hearing to be  
17 published once in one (1) newspaper of general circulation in Marion

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County, Indiana. To publish the newspaper notice, the agency shall directly contract with the newspaper. **An agency may not contract for the publication of a notice under this chapter until the agency has received a written or an electronic authorization to proceed from the publisher under subsection (g).**

(c) The agency shall cause a notice of public hearing and the full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter) to be published once in the Indiana Register. To publish the notice and proposed rule in the Indiana Register, the agency shall submit the text to the publisher **in accordance with subsection (g)**. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(d) The agency shall include in the notice required by subsections (b) and (c):

- (1) a statement of the date, time, and place at which the public hearing required by section 26 of this chapter will be convened;
- (2) a general description of the subject matter of the proposed rule; and
- (3) an explanation that the proposed rule may be inspected and copied at the office of the agency.

However, inadequacy or insufficiency of the subject matter description in a notice does not invalidate a rulemaking action.

(e) Although the agency may comply with the publication requirements in this section on different days, the agency must comply with all of the publication requirements in this section at least twenty-one (21) days before the public hearing required by section 26 of this chapter is convened.

(f) This section does not apply to the solicitation of comments under section 23 of this chapter.

**(g) The publisher shall review materials submitted under this section and determine the date that the publisher intends to include the material in the Indiana Register. After:**

- (1) establishing the intended publication date; and**
- (2) receiving the public hearing information specified in subsection (d) from the agency;**

**the publisher shall provide a written or an electronic mail authorization to proceed to the agency.**

SECTION 3. IC 4-22-2-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31. (a) After an agency

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has complied with section 29 of this chapter, or with IC 13-14-9-9(1) or IC 13-14-9-9(2), as applicable, the agency shall submit its rule to the attorney general for approval. The agency shall submit **the following to the attorney general:**

(1) The rule in the form required by section 20 of this chapter. ~~and with:~~

(2) The documents required by section 21 of this chapter.

**(3) Written authorization to proceed issued by the publisher under section 24(g) of this chapter.**

**(4) Any other documents specified by the attorney general.**

(b) The attorney general shall determine the number of copies of the rule. ~~and other documents to be submitted under this section:~~

SECTION 4. IC 4-22-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Except as provided in subsection (f), the secretary of state shall retain a duplicate original copy of each rule that has been accepted for filing by the secretary of state (including documents filed with the secretary of state under IC 4-22-2-21). The secretary of state has official custody of an agency's adopted rules.

(b) Within one (1) business day after the date that the secretary of state accepts a rule for filing, the secretary of state shall distribute two (2) duplicate copies of the rule to the publisher in ~~paper~~ **the form specified by the publisher.** However, the secretary of state may distribute the rule without including the full text of any matter incorporated into the rule.

(c) When the copies are distributed under subsection (b), the secretary of state shall include a notice briefly describing the incorporated matters.

(d) Within ninety (90) days after the secretary of state accepts a rule for filing, the secretary of state may distribute duplicate originals of the rule, as follows:

(1) To the governor, one (1) copy.

(2) To the attorney general, one (1) copy.

(3) To the Indiana library and historical department, two (2) copies.

(4) After December 31, 1987, to the commission on public records, the number of copies needed by the commission for its archive program under IC 5-15-5.1.

(e) The secretary of state may distribute copies under subsection (d) in micrographic or electronic form. The micrographic copies shall be prepared under IC 4-5-1-2.

(f) If a final rule includes material that has been incorporated by

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reference under IC 4-22-2-21, the secretary of state may:

(1) retain custody of the secretary of state's original copy of the material; or

(2) transfer the secretary of state's original copy of the material to the Indiana library and historical department when the secretary of state transfers two (2) copies of the duplicate original rule to the Indiana library and historical department under this section.

SECTION 5. IC 4-22-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The publisher shall publish a serial publication with the name Indiana Register at least six (6) times each year.

(b) **Notwithstanding any law, after June 30, 2006, the publisher shall publish the Indiana Register in electronic form only. However, the publisher shall distribute a printed copy of the Indiana Register to each federal depository library in Indiana.**

(c) **The publisher may meet the requirement to publish the Indiana Register electronically by permanently publishing a copy of the Indiana Register on the Internet.**

SECTION 6. IC 4-22-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The publisher shall compile, computerize, index, and print a codification of the general and permanent rules of the agencies with the name Indiana Administrative Code. The publisher may publish, with the Indiana Administrative Code, any tables, explanatory material, or other documents that the publisher considers appropriate.

(b) The publisher shall establish a system to maintain, supplement, and recompile the Indiana Administrative Code when necessary or appropriate.

(c) **Notwithstanding any law, after June 30, 2006, the publisher shall publish the Indiana Administrative Code in electronic form only. However, the publisher shall distribute a printed copy of the Indiana Administrative Code to each federal depository library in Indiana.**

(d) **The publisher may meet the requirement to publish the Indiana Administrative Code electronically by permanently publishing a copy of the Indiana Administrative Code on the Internet.**

SECTION 7. IC 4-22-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) Before an edition or supplement of the Indiana Administrative Code is printed **or (after June 30, 2006) published in electronic form**, the publisher shall deliver an affidavit to the secretary of state attesting that the text to be

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published in the edition or supplement has been compared with the preceding edition, the preceding supplement (if applicable), and the appropriate original versions of recently adopted rules and has been found to be correct and complete.

(b) Upon delivery of an affidavit under this section, the secretary of state shall certify the receipt of the affidavit and the publisher's assertions for the edition or supplement to which they apply.

SECTION 8. IC 13-14-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) Except as provided in subsection (b), the department shall provide notice in the Indiana Register of the first public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

(1) Identify the authority under which the proposed rule is to be adopted.

(2) Describe the subject matter and the basic purpose of the proposed rule. The description required by this subdivision must include a listing of all alternatives being considered by the department at the time of the notice and must set forth the basis for each alternative.

(3) Describe the relevant statutory or regulatory requirements or restrictions relating to the subject matter of the proposed rule that exist before the adoption of the proposed rule.

(4) Request the submission of alternative ways to achieve the purpose of the proposed rule.

(5) Request the submission of comments, including suggestions of specific language for the proposed rule.

(6) Include a detailed statement of the issue to be addressed by adoption of the proposed rule.

(b) This section does not apply to rules adopted under IC 13-18-22-2, IC 13-18-22-3, or IC 13-18-22-4.

**(c) The notice required under subsection (a) shall be published electronically in the Indiana Register under procedures established by the publisher.**

SECTION 9. IC 13-14-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The department shall provide notice in the Indiana Register of the second public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

(1) Contain the full text of the proposed rule, as provided under IC 4-22-2-24(c).

(2) Contain a summary of the response of the department to

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written comments submitted under section 3 of this chapter during the first public comment period.

(3) Request the submission of comments, including suggestions of specific amendments to the language contained in the proposed rule.

(4) Contain the full text of the commissioner's written findings under section 7 of this chapter, if applicable.

(5) Identify each element of the proposed rule that imposes a restriction or requirement on persons to whom the proposed rule applies that is not imposed under federal law.

(6) With respect to each element identified under subdivision (5), identify:

(A) the environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement to protect human health and the environment;

(B) examples in which federal law is inadequate to provide the protection referred to in clause (A); and

(C) the:

(i) estimated fiscal impact; and

(ii) expected benefits;

based on the extent to which the proposed rule exceeds the requirements of federal law.

(7) For any element of the proposed rule that imposes a restriction or requirement that is not imposed under federal law, describe the availability for public inspection of all materials relied upon by the department in the development of the proposed rule, including, if applicable:

(A) health criteria;

(B) analytical methods;

(C) treatment technology;

(D) economic impact data;

(E) environmental assessment data;

(F) analyses of methods to effectively implement the proposed rule; and

(G) other background data.

**(b) The notice required under subsection (a) shall be published electronically in the Indiana Register under procedures established by the publisher.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1135, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BUCK, Chair

Committee Vote: yeas 12, nays 0.

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EH 1135—LS 7082/DI 47+





## COMMITTEE REPORT

Madam President: The Senate Committee on Economic Development and Technology, to which was referred House Bill No. 1135, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 4, delete **"an LSA document number under this section."** and insert **"a written or an electronic authorization to proceed from the publisher under subsection (g)."**

Page 2, line 33, delete **"estimated date that the material will"** and insert **"date that the publisher intends to include the material in the Indiana Register. After:**

- (1) establishing the intended publication date; and**
- (2) receiving the public hearing information specified in subsection (d) from the agency;**

**the publisher shall provide a written or an electronic mail authorization to proceed to the agency.**

SECTION 3. IC 4-22-2-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31. (a) After an agency has complied with section 29 of this chapter, or with IC 13-14-9-9(1) or IC 13-14-9-9(2), as applicable, the agency shall submit its rule to the attorney general for approval. The agency shall submit **the following to the attorney general:**

- (1) The rule in the form required by section 20 of this chapter. ~~and with:~~**
- (2) The documents required by section 21 of this chapter.**
- (3) Written authorization to proceed issued by the publisher under section 24(g) of this chapter.**
- (4) Any other documents specified by the attorney general.**

**(b) The attorney general shall determine the number of copies of the rule. ~~and other documents to be submitted under this section:~~"**

Page 2, delete lines 34 through 36.

Page 3, line 37, after **"only."** insert **"However, the publisher shall distribute a printed copy of the Indiana Register to each federal depository library in Indiana.**

**(c) The publisher may meet the requirement to publish the Indiana Register electronically by permanently publishing a copy of the Indiana Register on the Internet."**

Page 4, line 8, after **"only."** insert **"However, the publisher shall distribute a printed copy of the Indiana Administrative Code to each federal depository library in Indiana.**

**(d) The publisher may meet the requirement to publish the**

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**Indiana Administrative Code electronically by permanently publishing a copy of the Indiana Administrative Code on the Internet."**

Page 4, after line 20, begin a new paragraph and insert:

"SECTION 8. IC 13-14-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) Except as provided in subsection (b), the department shall provide notice in the Indiana Register of the first public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

- (1) Identify the authority under which the proposed rule is to be adopted.
- (2) Describe the subject matter and the basic purpose of the proposed rule. The description required by this subdivision must include a listing of all alternatives being considered by the department at the time of the notice and must set forth the basis for each alternative.
- (3) Describe the relevant statutory or regulatory requirements or restrictions relating to the subject matter of the proposed rule that exist before the adoption of the proposed rule.
- (4) Request the submission of alternative ways to achieve the purpose of the proposed rule.
- (5) Request the submission of comments, including suggestions of specific language for the proposed rule.
- (6) Include a detailed statement of the issue to be addressed by adoption of the proposed rule.

(b) This section does not apply to rules adopted under IC 13-18-22-2, IC 13-18-22-3, or IC 13-18-22-4.

**(c) The notice required under subsection (a) shall be published electronically in the Indiana Register under procedures established by the publisher.**

SECTION 9. IC 13-14-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The department shall provide notice in the Indiana Register of the second public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

- (1) Contain the full text of the proposed rule, as provided under IC 4-22-2-24(c).
- (2) Contain a summary of the response of the department to written comments submitted under section 3 of this chapter during the first public comment period.
- (3) Request the submission of comments, including suggestions

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of specific amendments to the language contained in the proposed rule.

(4) Contain the full text of the commissioner's written findings under section 7 of this chapter, if applicable.

(5) Identify each element of the proposed rule that imposes a restriction or requirement on persons to whom the proposed rule applies that is not imposed under federal law.

(6) With respect to each element identified under subdivision (5), identify:

(A) the environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement to protect human health and the environment;

(B) examples in which federal law is inadequate to provide the protection referred to in clause (A); and

(C) the:

(i) estimated fiscal impact; and

(ii) expected benefits;

based on the extent to which the proposed rule exceeds the requirements of federal law.

(7) For any element of the proposed rule that imposes a restriction or requirement that is not imposed under federal law, describe the availability for public inspection of all materials relied upon by the department in the development of the proposed rule, including, if applicable:

(A) health criteria;

(B) analytical methods;

(C) treatment technology;

(D) economic impact data;

(E) environmental assessment data;

(F) analyses of methods to effectively implement the proposed rule; and

(G) other background data.

**(b) The notice required under subsection (a) shall be published electronically in the Indiana Register under procedures established by the publisher."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1135 as printed February 9, 2005.)

FORD, Chairperson

Committee Vote: Yeas 7, Nays 1.

**EH 1135—LS 7082/DI 47+**



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